May 6, 2004

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Communication in WC Docket No. 96-262

Dear Chairman Powell and Commissioners:

On January 23, 2004, the Association for Local Telecommunications Services ("ALTS") and over a dozen of its carrier members submitted an *ex parte* letter[1] regarding our concerns with possible revisions to rules the Commission issued in its *Seventh Report and Order and FNPRM* in WC Docket No. 96-262 ("*CLEC Access Charge Order*").[2] Those rules established benchmark access rates for competitive local exchange carriers ("CLECs") to obtain compensation for originating and terminating long distance traffic. The *CLEC Access Charge Order* was intended as an interim measure to resolve numerous disputes that had arisen between interexchange carriers ("IXCs") and CLECs concerning the appropriate level of CLEC access charges, and also the IXCs' obligation to make timely payments therefor, until such time as the Commission had completed a comprehensive investigation into all forms of intercarrier compensation.

In the *ex parte* letter, ALTS and its members noted that the *CLEC Access Charge Order* reduced CLEC interstate access revenues by 87% over three years by requiring CLECs to reduce their aggregate rates to those matching the ILEC aggregate rates within the three-year transition period. The Commission preserved CLEC flexibility in establishing their access rates, requiring *only* "that the aggregate charges for these services, *however described in their tariffs*, cannot

[1] See *Ex Parte Communication* in WC Docket No. 96-262 (filed Jan. 23, 2004).
[2] Seventh Report and Order and FNPRM, CC Docket No. 96-262 (rel. April 27, 2001) ("*CLEC Access Charge Order*").

exceed our benchmark."[3] This bright line rule was intended to provide "a simple determination as to whether CLEC access charges are just and reasonable...."[4]

However, ALTS and the undersigned carriers are concerned that the Commission may be considering retreating from that bright line approach by requiring a CLEC to tariff individual rate elements for its access service. As the Commission is aware, CLECs, by and large, do not break their access services down into discrete elements, nor should they now be compelled to do so. Many CLEC billing systems that bill a composite rate are not programmed for rate-by-rate billing, and such a conversion would be very expensive.[5] The Commission should not muddy the water by adopting an artificial cost-oriented argument that is entirely inconsistent with the *CLEC Access Charge Order*, which acknowledged that interstate CLEC access rates need not be separated into discrete rate elements because the benchmark access rates were not directly based on economic cost modeling.

The Commission has also recently received submissions from NewSouth Communications, requesting that the Commission reiterate that the comparable ILEC rate, on which the CLEC aggregate rate will be based, includes all ILEC switched access rate elements, rather than isolated rate elements. Specifically, to the extent that a CLEC provides tandem access functionality, the *CLEC Access Charge Order* allows it to charge for all access elements, even where the CLEC subtends an ILEC tandem. ALTS supports this request in order to provide certainty in the industry and reduce disputes and litigation.

AT&T and MCI have argued that they should not pay for CLEC tandem access functionality if the CLEC subtends an ILEC tandem. The IXCs have attempted to allocate the CLEC access charge benchmark rate among various access cost components (determined with reference to the ILEC's legacy networks, without regard for any alternative technologies or structures) with the goal of reducing that rate by the amount allocated to particular access functions allegedly not performed by a CLEC. The IXC effort to disregard the CLEC's tandem switch is analogous to the ILEC effort to disregard the CLEC tandem switch with respect to reciprocal compensation. The FCC should make it clear that the CLEC is entitled to charge the ILEC aggregate rate regardless of the CLEC's network design. Moreover, because the Commission did not provide a cost analysis of individual rate elements, it would be inappropriate to merely subtract out the ILEC tandem rate from the CLEC aggregate rate, as the IXCs suggest. Finally, as NewSouth describes in its submissions, an IXC could reduce its access costs and improve the efficiency of the network by directly interconnecting with a CLEC to obtain all access services directly from that CLEC.

---

[3] *Id.* ¶ 55 (emphasis added).
[4] *Id.* ¶ 4.
[5] Moreover, for CLECs that expanded through acquisition, tariffing discrete access elements may be problematic. Network architecture configuration may be distinctly different between entities that now constitute one CLEC such that the discrete access elements may vary between access markets. Thus, it makes sense for CLECs to have the option of a unified access rate since it would be very difficult to tariff discrete elements across a CLEC's consolidated footprint.

With the June 21 deadline fast approaching for CLEC access reductions to the ILEC benchmark, ALTS urges the Commission to act quickly on this matter.

Respectfully submitted,

/s/ Teresa K. Gaugler
Teresa K. Gaugler
Assistant General Counsel
Association for Local Telecommunications Services
888 17th Street, NW, Suite 1200
Washington, D.C. 20006
(202) 969-2587
tgaugler@alts.org

/s/ J. Jeffery Oxley
J. Jeffery Oxley
Executive Vice President, General Counsel
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 900
Minneapolis, MN 55402
Tel: 612 436-6692
FAX: 612 436-6792
email: jjoxley@eschelon.com

/s/ Marty W. Clift, Jr.
Martin W. Clift, Jr.
Vice President - Regulatory Affairs
Cavalier Telephone, L.L.C.
2134 W. Laburnum Ave.
Richmond, VA 23227
804-422-4515
mclift@cavtel.com

/s/ Michael P. Gallagher
Michael P. Gallagher
CEO
FDN Communications
2301 Lucien Way, Suite 200
Maitland, FL 32751
407-835-0300
mgallagher@mail.fdn.com

/s/ Julia O. Strow
Julia O. Strow
Vice President
Cbeyond Communications
320 Interstate North Parkway
Suite 300 Atlanta, GA 30339
(678) 424-2429
Julia.Strow@cbeyond.net

/s/ Marva Brown Johnson
Marva Brown Johnson
KMC Telecom
1755 North Brown Road
Lawrenceville, Georgia 30043
Office: (678) 985-6220
Cell: (678) 662-1138
Fax: (678) 985-6213
Email: marva.johnson@kmctelecom.com

/s/ Joan Mandeville
Joan Mandeville
CEO
Blackfoot Telecommunications Group
1221 North Russell Street
Missoula, MT 59808
406-541-5300
jmandeville@blackfoot.com

/s/ William A. Haas
William A. Haas
Associate General Counsel
McLeodUSA
6400 C Street SW
Cedar Rapids, Iowa 52406-3177
(319) 790-7295
whaas@mcleodusa.com

/s/ Edward J. Cadieux

Edward J. Cadieux
NuVox, Inc.
Vice President, Regulatory & Public Affairs
16090 Swingley Ridge Road, Suite 500
Chesterfield, Missouri 63017
Phone: (636) 537-5743
ecadieux@nuvox.com

/s/ Jane Z. Delahanty
Jane Z. Delahanty
Assistant Vice President, Regulatory Affairs
U.S. TelePacific Corp. d/b/a TelePacific Communications
515 S. Flower Street, 47th Floor
Los Angeles CA 90071
213-213-3288
jdelahanty@telepacific.com

/s/ Chris Dimock
Chris Dimock
President & CEO
OneEighty Communications, Inc.
206 North 29th Street
Billings, MT 59101
(406) 294-4006
cdimock@oneeighty.com

/s/ John Sumpter
John Sumpter
Vice President - Regulatory
Pac-West
1776 March Lane, Suite 250
Stockton, CA 95207
209 926-3136
jsumpter@pacwest.com

/s/ Mark Jenn
Mark Jenn
Manager - CLEC Federal Affairs
TDS METROCOM
525 Junction Road
Madison WI 53717
Phone: 608.664.4196
Fax: 608.664.4184
email: mark.jenn@tdsmetro.com

cc: Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Dan Gonzalez
Lisa Zaina
Bill Maher
Carol Mattey
Jane Jackson
Rich Lerner
Scott Bergmann
Tamara Preiss
Steven Morris
Victoria Schlesinger